



INTERIOR BOARD OF INDIAN APPEALS

Dean Wallace v. Aberdeen Area Director, Bureau of Indian Affairs

29 IBIA 142 (03/26/1996)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

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|---------------------------|---|--------------------------|
| DEAN WALLACE, | : | Order Affirming Decision |
| Appellant | : | |
| | : | |
| v. | : | Docket No. IBIA 95-147-A |
| | : | |
| ABERDEEN AREA DIRECTOR, | : | |
| BUREAU OF INDIAN AFFAIRS, | : | |
| Appellee | : | March 26, 1996 |

Appellant Dean Wallace seeks review of a June 12, 1995, decision issued by the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to approve a lease to appellant without the consent of the Devils Lake Sioux Tribe (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

In response to a December 16, 1994, advertisement for the leasing of lands on the Devils Lake Sioux Reservation, appellant submitted a bid on tract DLS-907, in which the Tribe owns a 50 percent interest. It appears that the Superintendent, Fort Totten Agency, BIA (Superintendent), initially accepted appellant's bid. However, on March 6, 1995, the Superintendent returned appellant's bid deposit and informed him that the Tribe had decided not to sign the proposed lease. The Tribe's decision is consistent with Tribal Resolution No. A05-93-033, adopted on November 12, 1992, which states that "the Tribal Council hereby wishes not to lease any trust land or property to Glenn Wallace and his immediate family" (emphasis in original). Appellant is Glenn Wallace's son.

On appeal, the Area Director upheld the Superintendent's action, stating that BIA lacked authority to award the lease on DLS-907 to appellant without the consent of the Tribe. The Area Director further suggested that appellant's dispute was with the Tribe, not with BIA.

Appellant's main argument on appeal is that Glenn Wallace was told by a BIA employee that the Tribe did not become involved in leasing matters unless it owned 51 percent of a tract. The BIA employee involved has submitted an affidavit stating that she did not speak with Glenn Wallace regarding this appeal. Glenn Wallace, on behalf of appellant, asserts that he did speak with this person.

The Board finds it unnecessary to resolve this factual dispute in order to decide this case.

BIA lacks authority to lease tribal lands or interests in land without the consent of the tribe. See 25 U.S.C. §§ 415, 476(e) (1994); 25 CFR 162.1(c), 162.2, 162.3(4); St. Mary Lake Lessees v. Acting Billings Area Director, 27 IBIA 261 (1995); Lower Peoples Creek Cooperative v. Acting

Billings Area Director, 23 IBIA 297 (1993). 1/

Where, as here, the Tribe has specifically declined to lease tribal land to appellant, the Board concludes that BIA lacked authority to lease the tribal interests in DLS-907 to him. If appellant believes he should be allowed to lease this or any other land in which the Tribe owns an interest, he must raise his objections with the Tribal Council.

Appellant suggests that BIA violated its trust responsibility by not leasing the tract to him because he was the high bidder. In leasing trust property, BIA's trust duty is owed to the owners of that property. In the context of this case, appellant is a potential lessee of trust property. As such, he lacks standing to allege a violation of BIA's trust responsibility to the landowners. See, e.g., Gossett v. Portland Area Director, 28 IBIA 72, 75 (1995), and cases cited therein. Any such allegation would have to be raised by the landowners themselves.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Aberdeen Area Director's June 12, 1995, decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge

1/ 25 U.S.C. § 476(e) states:

"In addition to all powers vested in any Indian tribe or tribal council by existing law, the constitution adopted by said tribe shall also vest in such tribe or its tribal council the following rights and powers: * * * to prevent the sale, disposition, lease, or encumbrance of tribal lands, interests in lands, or other tribal assets without the consent of the tribe."

Article VI, sec. 9, of the Tribe's Constitution authorizes the Tribal Council "[t]o manage, lease or otherwise deal with tribal lands and tribal resources in accordance with existing Federal law." Article VI, sec. 12, adopted as Amendment No. III, effective May 3, 1974, empowers the Tribal Council "[a]s authorized by law, to manage, lease, permit, sell, or otherwise deal with tribal lands, interest in lands, or other tribal assets."

25 CFR 162.1(c) defines "tribal lands" as "land or any interest therein."